U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

B5

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

FILE: WAC 05 056 52687 Office: CALIFORNIA SERVICE CENTER Date: OCT 02 2006

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a research associate. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and a new reference letter. For the reasons discussed below, we uphold the director's decision. While one of the petitioner's articles attracted a little attention in the field, that article was in a different area than his current focus and his overall track record is insufficient to warrant a waiver of the job offer requirement in the national interest.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

It appears from the record that the petitioner seeks classification as an alien of exceptional ability. This issue is moot, however, because the record establishes that the petitioner holds a Ph.D. in Chemical Engineering from Louisiana State University (LSU). The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the

professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, chemical mechanical planarization, and that the proposed benefits of his work, more efficient and environmentally sound semiconductor manufacturing, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

The director concluded that the record lacked evidence of the petitioner's impact in the field, such as letters from several independent experts or evidence of wide and frequent citation. On appeal, counsel

asserts that *Matter of New York State Dep't of Transp.* 22 I&N Dec. at 215 does not explicitly require the submission of letters from independent experts and that, regardless, the petitioner did submit such letters. Counsel further asserts that the petitioner has authored "many scientific publications" and submitted evidence of "extensive citations of his published research by established researchers beyond his circle of close colleagues."

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. While *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 15 may not expressly require letters from independent experts, it does provide that a petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. While letters from the alien's immediate circle of colleagues are important in providing details about the petitioner's role for various projects, they cannot by themselves establish the petitioner's influence over the field as a whole.

Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of industry interest and positive response in the field are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review.

The petitioner received his Ph.D. from LSU in 2002. He then accepted a postdoctoral appointment at the National Science Foundation (NSF) / Semiconductor Research Corporation (SRC) Engineering Research Center (ERC) for Environmentally Benign Semiconductor Manufacturing at the University of Arizona. The petitioner is currently a senior research and development scientist at Araca Inc. in Arizona.

Dr. [redacted], the petitioner's dissertation advisor at LSU, asserts that the petitioner worked on NiCoFe ternary alloy electrodeposition, an area with tremendous recent interest due to their unique magnetic and thermophysical properties. Dr [redacted] explains that while "considerable progress has been achieved in establishing plating conditions of the NiCoFe alloys, practical operation still relies much on empiricism due to its complex mechanism." Moreover, while "the anomalous depositions behavior has been investigated since the 1920's . . . [the] mechanism is still not well understood."

The petitioner produced experimental data that allows for a determination of proper plating conditions to obtain desired alloys and "proposed a mathematical model that successfully simulates the metal ion concentration's effect on the alloy composition and most importantly, captured the anomalous deposition behavior." The petitioner's model "can be used to simulate any combination of the iron-group binary (NiFe, NiCo and CoFe) alloy depositions." Dr [redacted]y states that this work has been published and referenced by Professo[redacted] at the University of Alberta. She further asserts that the petitioner's "dissertation has been sent to the Sandia National Laboratories to be used as a Reference." She concludes: "there is no doubt that [the petitioner's] research on NiCoFe ternary alloy deposition has provided a better understanding of the anomalous deposition, benefiting the entire research community."

The record contains the petitioner's articles on NiCoFe ternary alloy electrodeposition and the citation record for those articles. As of the date of filing, one of the petitioner's articles, "An Experimental Kinetic Study," had been cited eight times, five of which are from independent research teams including Professor [redacted] In response to the director's request for evidence, the petitioner submitted evidence that this article had been cited 12 times, at least three of which are self-citations by the petitioner or Dr. [redacted] Two of the petitioner's other articles had been cited three times each. Dr. [redacted], a professor at the Massachusetts Institute of Technology and faculty participant with ERC, states: "I understand that [the petitioner's] dissertation has also been requested by the Sandia National Laboratories for reference." Dr. [redacted] does not profess any affiliation with the laboratory. The record lacks confirmation from Sandia National Laboratories confirming that they requested the petitioner's dissertation and explaining the significance of that request.

The petitioner's work with ternary alloys has only been minimally cited. We acknowledge that the petitioner received the 2002 Outstanding Dissertation Award from the American Institute of Chemical Engineers, but note that the award was limited to the "Baton Rouge Section." Moreover, recognition for achievements from peers is merely one criterion for aliens of exceptional ability, a classification that normally requires a labor certification. We cannot conclude that meeting one, or even the requisite three criteria for that classification warrants a waiver of that requirement. While independent references attest to the importance and significance of the petitioner's doctoral work, none of them affirm applying his work in their own laboratories, such as relying on his models. The record lacks evidence from industry officials confirming their interest in his models or confirmation from Sandia

National Laboratories confirming their interest in his work. Thus, the petitioner has not established that this work has had some degree of influence on the field as a whole.

As noted by several references, the petitioner began working in an entirely new area of integrated circuit (IC) manufacturing at the University of Arizona, chemical mechanical planarization (CMP). Dr. [redacted] a professor at the University of Arizona, explains that copper is used at the interconnect metal for IC manufacturing due to its low resistivity and high electromigration resistance. In addition, CMP is used extensively in the semiconductor industry "for producing optically flat and damage free surfaces in state-of-the-art integrated circuit fabrication." The petitioner's completed work in this area as of the date of filing included tribological, thermal and kinetic studies.

The petitioner's tribological studies involved an investigation of the effects "of polishing pressure, relative pad-wafer sliding velocity, slurry additives and abrasive particle concentration on friction force and lubrication mechanism during copper polishing." These elements have a significant influence on the life of polishing pads, which constitute one-sixth of the cost of the process. The petitioner's results "can be used to optimize the polishing condition to achieve longer pad life and reduce the cost of ownership for the process."

In his thermal studies, the petitioner expanded on previous results indicating that copper removal rates increase with applied polishing power by showing that the removal rate exhibited a dramatic drop at certain polishing conditions. The petitioner demonstrated that the copper removal rate "was closely correlated to the pad temperature." According to Dr. [redacted] based on this work, the petitioner and other researchers at the University of Arizona have applied for a patent disclosure through the University of Arizona for their wafer carriers that directly measure wafer temperature during copper polishing. Dr. [redacted] further asserts that many "industrial researchers are very interested in this finding because it is critical for them to avoid such polishing regions to maintain the stability of the polishing process."

The record includes only one letter from an independent industry researcher. Dr. [redacted] Chief Technology Officer for Neopad, who acknowledges that the petitioner's thermal studies "clearly illustrated the significance of temperature control during the copper CMP process." D[redacted] however, does not indicate that Neopad is considering licensing the petitioner's wafer carriers or otherwise applying the results of the petitioner's thermal studies.

In his kinetic studies, the beneficiary used a modified Langmuir-Hinshelwood model to successfully predict copper removal rates and also simulated the chemical and mechanical action dominance upon the removal rate. Using this model, the petitioner is able to identify a chemically or mechanically controlled polishing region and optimize polishing conditions to achieve a balanced process, which reduces the consumption of slurry and pads. Thus, according to Dr. [redacted]nd other references, this work contributes to a "more efficient and more environmentally benign CMP process." Once again, however, the record lacks industry confirmation that any manufacturing company is considering adopting the petitioner's models.

Finally, Dr [redacted] discusses the petitioner's future projects, one of which has received funding. While this information confirms that the petitioner intends to continue working in an area of intrinsic merit that has the potential for benefits that are national in scope, the petitioner has not yet produced any results from these projects.

The remaining letters provide identical information to that discussed above. As stated above, while Dr. [redacted]s independent of the petitioner and his employer, he does not claim to be influenced by the petitioner's work. Moreover, Dr [redacted] does not explain how he became aware of the petitioner's work. Much of his discussion appears derived from Dr. [redacted] letter. Thus, it is not clear that he had ever heard of the petitioner prior to being requested to provide a reference letter. While the reference letter submitted on appeal from Dr. [redacted] a professor at Clarkson University, is from an independent researcher, D[redacted]ndicates repeatedly that he is basing his opinion on a review of the petitioner's curriculum vitae and publication record. He does not indicate that he was aware of the petitioner's work prior to being contacted for a reference. Moreover, his letter provides similar information to that contained in the other letters.

While the petitioner's research is no doubt of value and has gained the respect of his colleagues, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or other research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who obtains a Ph.D. or is working on a project with potential national benefits inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. The record does not establish that the petitioner's work has had a notable degree of influence on the field as a whole.

Ultimately, while the petitioner's past projects attracted some attention as evidenced through the citations of one article, the record contains no similar interest in the petitioner's current work. The petitioner's overall track record is simply insufficient.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.